IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.352 of 2006.

Date of decision: 16.11.2006.

Brij Bhushan Lal ..Petitioner

-Versus-

H.P. T.D.C. and others ..Respondents

Coram:

The Hon'ble Mr.Justice V.K.Gupta, Chief Justice

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.S.K.Sharma, Advocate.

For Respondents: None.

Deepak Gupta, J.(Oral)

The petitioner was an employee of the Himachal Pradesh Tourism Development Corporation (hereafter referred to as the HPTDC). The petitioner admittedly submitted a resignation from the post which he was holding on 10.9.1977. According to him he withdrew the resignation on 16.9.1977 but on 21.9.1977 the Managing Director of the HPTDC accepted the resignation with retrospective effect from 15.9.1977. The petitioner thereafter filed a mercy appeal to the HPTDC which appeal was accepted on 2.6.1978 and the petitioner was granted fresh appointment w.e.f. June 12, 1978. However, the petitioner was granted seniority with effect from this date only. Thereafter, some persons who were originally junior to the petitioner were

promoted prior to the petitioner. He then represented that his resignation had wrongly been accepted with retrospective effect. When his plea was not accepted he filed an O.A. in the year 1991 before the Administrative Tribunal. This O.A. being OA No.1683 of 1991 was disposed of by a Bench of the learned H.P. Administrative Tribunal (hereinafter referred to as the Tribunal) on 30.12.1992 by directing that the Original Application filed by the petitioner be treated as representation to the Managing Director.

The HPTDC considered the representation of the petitioner through its Grievance committee. The petitioner was heard by the said Committee. On 8.4.1993 the Managing Director issued an office order wherein the recommendations of the Grievance Committee were reproduced and the petitioner was asked to give his acceptance in writing to the recommendations of the Grievance Committee. The relevant portion of the office order reads as follows:

> "In the year, 1990 the Corporation had constituted a Grievance Committee for examining and considering the pending grievances of its employees. Representation of Sh.B.B.Aggarwal alongwith entire service record was also placed before the Grievance Committee held on 18.12.1990. Representationist was also heard by the Committee. In nutshell, the following recommendations were given by the Committee:-
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> 'the Committee is of the view that since neither the seniority in the cadre of Tourist Officer is affected, nor the

Corporation is likely to suffer any financial loss due to condonement of his period of absence from duty, the representation of Sh.B.B. Aggarwal be accepted with the condition that the proposed arrangement shall purely be notional for the purpose of retrospective financial benefits as far as period prior to 31.12.1990 is concerned. The acceptance of his representation is purely for the purpose of increment with immediate effect, if any, as also for the purpose of earned leave benefit and gratuity.'

As has also been observed by the Hon'ble Tribunal vide judgment dated 30.12.1992, the matter is pending and has not been finalized so far. Sh.B.B. Aggarwal, Tourism Development Officer, Tourist Information Office, Kasauli is hereby asked to give in writing his acceptance if the above recommendation of the Grievance Committee are acceptable to him within 7 days from the issue of this order for taking further action in the matter."

It is apparent that the Committee clearly held that since the seniority in the cadre of Tourist Officer shall not be affected and no financial loss shall be caused to the Corporation the period from 15.9.1977 till 12.6.1978 may be treated as period from absence on duty with the condition that the same will be a totally notional arrangement for the purpose of retrospective financial benefit. It was also made clear that this proposal had been mooted only for the purpose of granting increments with immediate effect etc. It is clear that by this recommendation no benefit was given to the petitioner for the purposes of seniority or payment of pay for this period.

The petitioner accepted this proposal vide his written option dated 16.4.1993 and thereafter the HPTDC passed an order on 30.6.1993, relevant portion of which reads as under:

> "1.The condonement of absence period shall be purely notional for the purpose of retrospective financial benefits as far as the period prior to 31.12.1990 is concerned.
> 2.The acceptance of his representation is purely for the purpose of increment with immediate effect, if any, as also for the purpose of earned leave, benefit and gratuity."

The petitioner thereafter felt satisfied and did not raise any challenge to the said order till the year 1996 when he again claimed that he should be given all consequential benefits such as seniority, pay fixation, arrears of salary, promotion etc. Since the HPTDC did not accept his representation he filed another O.A. being O.A. No.1147 of 1997 before the Tribunal which was rejected by the Tribunal on 16.7.1999 on two grounds; firstly that the petition was barred by limitation and secondly that the petitioner by his own conduct had accepted the proposal of the Grievance Committee and was as such not entitled to the reliefs prayed for. The petitioner thereafter filed a Review Petition before the Tribunal which was rejected on May 17, 2005. Hence the present petition.

It would be pertinent to mention that even this petition has been filed almost one year after the order of the Tribunal was passed and there is no explanation for the delay in filing the

petition. However, on the insistence of the counsel appearing for the petitioner we have still gone into the merits of the case.

A perusal of both the orders of the learned Tribunal clearly shows that the Tribunal has considered each and every aspect of the matter. The Tribunal has held that the petitioner had not come with clean hands to it and had suppressed important facts especially the fact that the proposal of the HPTDC had been accepted by him vide his letter dated April 16, 1993. Even with regard to limitation no explanation had been given by the petitioner why he kept sleeping over the matter from 1993 till 1997. Mr. Sharma appearing for the petitioner has urged that the cause of action arose to the petitioner in the year 1995 when his juniors were promoted and thereafter he made his representation and immediately after the representation he filed the O.A.

The matter is not so simple. The whole dispute is for the period 1977-1978. The petitioner did not raise any dispute for this period till 1991. Even thereafter the Grievance Committee accepted his representation partly and the petitioner was specifically asked whether he agreed to the proposal of the Grievance Committee. Once he accepted the proposal of the Grievance Committee, in our considered view, he had no right to challenge the same again. Furthermore he was well aware of the proposal of the Grievance Committee and if according to him he had been pressurized to accept the same he should have challenged the same within one year thereafter. Repeated

representations would not enlarge the period of limitation. The learned Tribunal rightly rejected the Original Application and Review Petition of the petitioner.

In view of the above discussion, we do not find any merit in the writ petition which is dismissed in limine.

(V.K. Gupta),
Chief Justice

November 16, 2006.
PV

(Deepak Gupta),
Judge